

On June 10, 2002, claimant was performing his regular job duties at Wal-Mart unloading a truck and moving the merchandise into the store, when he lost consciousness and fell to the floor. Claimant has no recollection of what happened. He awoke in the ambulance on the way to the hospital emergency room.

The evidence establishes claimant suffered an accidental injury in the course of his employment, as it occurred while he was at work and in the service of his employer. The only question is whether the claimant's accidental injury arose out of his employment with respondent.¹

The Board has repeatedly held that unexplained falls or neutral risks occurring in the course of an employee's employment, even though they have no particular employment or personal character, are compensable. In so holding, the Board has followed the majority rule as set out in 2 *Larson's Workers' Compensation Law*, § 7.04 (2002).

Respondent, however, disputes that claimant's fall was unexplained. Instead, respondent contends that it was due to a personal risk which, therefore, renders this claim non-compensable.² Claimant fell because he lost consciousness. Judge Moore found that claimant lost consciousness due to a personal condition and not due to a risk or hazard associated with employment.³ As such, benefits were denied. The Board agrees.

Claimant's loss of consciousness was due to a seizure, not heat stroke. This is a personal condition unrelated to claimant's work activities. The record fails to prove that claimant's seizure disorder was caused or aggravated by the conditions of employment. The opinion by Dr. Michael Munhall that the extreme heat contributed to claimant's seizure is contradicted by the fact claimant suffered a similar event (seizure) about two weeks later while playing the guitar in an air-conditioned nursing home. Furthermore, Dr. Munhall appears to have believed that claimant was working in higher temperatures and closer in time to his seizure than what actually occurred.

AWARD

WHEREFORE, the preliminary hearing Order of Administrative Law Judge Bruce E. Moore dated February 10, 2002, is affirmed.

IT IS SO ORDERED.

¹ See K.S.A. 44-501(a).

² See *Rogers v. Wal-Mart*, WCAB Docket No. 233,965 (May 2000).

³ See *Bennett v. Wichita Fence Co.*, 16 Kan. App. 2d 458, 824 P.2d 1001 (1992).

Dated this _____ day of May 2003.

BOARD MEMBER

c: Kevin T. Stamper, Attorney for Claimant
Kurt W. Ratzlaff, Attorney for Respondent
Bruce E. Moore, Administrative Law Judge
Director, Division of Workers Compensation